

NORTH CAROLINA
DURHAM COUNTY

LICENSE AGREEMENT FOR
STREET TREES AND IRRIGATION SYSTEM

THIS LICENSE AGREEMENT made and entered into this the _____ day of _____, 20____, by and between the **CITY OF DURHAM**, a municipal corporation ("the City"), and **MJM GATEWAY TERRACE RE, LLC**, ("the Licensee");

W I T N E S S E T H:

In consideration of the performance of the conditions hereinafter set forth on the part of the Licensee, the City of Durham hereby grants to the Licensee, a license to construct and maintain street trees and an irrigation system within the Watkins Road right-of-way at 3301 and 3305 Watkins Road. Hereinafter, the street trees and irrigation system shall be referred to as ("the System") which is made a part of this License Agreement.

The Licensee expressly agrees:

(1) That the installation of the street trees will be in accordance with the landscaping plan in the approved site plan D1200061 and amendments. That the installation of the irrigation system will be in accordance with the approved irrigation plan. Modifications to the landscaping plan must be approved by the County/City Planning Department. Modifications to the irrigation plan must be approved by the City Engineering Division.

(2) The work is to be inspected by, and shall conform to the requirements of, the City Engineering Division.

(3) The Licensee will assume the cost of installation, maintenance, and repair, including the cost of repairs to the street and pavement associated with the installation, maintenance, and repair of the System.

(4) The irrigation system shall be at a height not greater than 18 inches from the surface of the street.

(5)(a) To the maximum extent allowed by law, Licensee shall indemnify and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this license (including but not limited to the constructing, maintaining, or repairing the pavement or street and in the installation, preparation, maintenance, or repair of the Systems) as a result of acts or omissions of Licensee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City of Durham ("City").

(b) Definitions. As used in subsections "a" above and "c" below--"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines (including but not limited to those levied by the N.C. Department of Natural Resources and Community Development), penalties, royalties, settlements, and expenses (including interest and reasonable attorneys' fees assessed as part of any such item); and "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees.

(c) Limitation of Licensee's Obligation. Subsection "a" above shall not require the Licensee to indemnify or hold harmless the City, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the City, its independent contractors, agents, employees, or indemnitees.

(6) If the City notifies the Licensee that the City will change the grade of the street or perform any work on said street that may interfere with the System, the Licensee shall make such changes and relocations at the Licensee's expense as may be necessary so that the System will not interfere with, in any manner, such street work.

(7) At its own expense, the Licensee shall, upon the request of the City, relocate the System if it interferes with the construction, installation, repair, or maintenance of any underground utilities of the City.

(8) This license conveys no real property right or interest in any street or sidewalk area.

(9) The City may revoke this license upon ninety (90) days written notice. Within ninety days of receipt of such notice, the Licensee shall remove, at its expense, all materials, equipment, and supplies belonging to it and shall leave the site in as neat, safe, and undamaged condition as it was upon receipt of the notice.

(10) This license agreement is not transferable and when the property changes ownership, then the new owner will be responsible for either removing the System or applying for a new license agreement.

(11) E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

MJM GATEWAY TERRACE RE, LLC

By: _____
Manager

State of _____
County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of **MJM GATEWAY TERRACE RE, LLC**, a limited liability company organized and existing under the laws of the State of _____, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

ATTEST

CITY OF DURHAM

_____ **By:** _____

preaudit certificate, if applicable _____